

DATE: December 17, 2004

MEMORANDUM FOR: Coastal Program Managers

FROM: John R. King
Chief, Coastal Programs Division

SUBJECT: Draft 2005 Section 309 Guidance

Attached is draft guidance for revising section 309 Assessments and developing new Strategies. Please provide any comments to Diana Olinger (Phone: 301/713-3155 ext. 149, or e-mail Diana.Olinger@noaa.gov) by February 7, 2005.

The current draft guidance is based on previous guidance with some streamlining and clarification. The revised guidance, where appropriate, also reflects the draft performance indicators currently being reviewed as part of the pilot study to develop the National Coastal Management Performance Measurement System (NCMPMS). OCRM will continue to work with coastal states to ensure an integrated approach to performance measurement across all aspects of the coastal program, the CZMA sections 309 and 312, and all performance reporting requirements.

We will review state comments, make needed changes, and provide final guidance in early 2005 so that states may begin work on the assessment and strategy next spring. I look forward to your comments.

Attachment

Section 309 Guidance Draft December 2004

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I. OVERVIEW

Section 309 of the Coastal Zone Management Act (CZMA), as amended in 1990 and 1996, establishes a voluntary coastal zone enhancement grants program to encourage states and territories to develop program changes in one or more of the following nine coastal zone enhancement areas: wetlands, public access, coastal hazards, cumulative and secondary impacts, energy and government facility siting, marine debris, ocean resources, special area management plans, and aquaculture. Under this program, the Secretary of Commerce is authorized to make awards to states and territories to develop and submit for federal approval program changes that support attainment of the objectives of one or more of the enhancement areas. Section 309 further requires the Office of Ocean and Coastal Resource Management (OCRM) to identify, in close cooperation with each state and territory, that state's or territory's priority needs for improvement; and to evaluate and rank state and territory funding proposals.

This document provides updated guidance to states and territories on the types of activities eligible for section 309 funding, the process and content for the next round of Assessments and Strategies, and OCRM's process and criteria for reviewing the Assessments and reviewing and ranking the Strategies. States and territories must update their Assessment and successfully complete a new Strategy to be eligible for Section 309 funding in FY 2006 and beyond. States and territories will update their Assessments based on a set of questions that was developed by OCRM, in consultation with states and territories (attached). Strategies will be based on the needs and priority enhancement areas identified in the Assessment and will cover the five year period from FY 2006 - FY 2011. States should consider the development and use of performance indicators such as those being considered in pilot study of the National Coastal Management Performance Measurement System (NCMPMS), in their Assessments and Strategies. OCRM will incorporate the results of the NCMPMS pilot study into the final 309 guidance in early 2005. This guidance supersedes the guidance documents issued May 31, 1991; June 24, 1996; and July 24, 2000.

II. ELIGIBLE SECTION 309 ACTIVITIES

The following activities are eligible for section 309 funding.

A. Assessments and Strategies

States may fund activities necessary to develop section 309 Assessments and Strategies with section 309 funds, including the development of measurable management objectives and performance indicators for each state's priority enhancement areas.

B. Program Changes

Program changes are, as the term indicates, changes to federally-approved CZM programs as opposed to changes in the manner states and territories implement their programs. Program changes clearly include changes to state and territory enforceable policies and authorities. The

definition of program change also includes new or revised state and territory coastal land acquisition and management programs as may be necessary to fully meet state and territory needs in such enhancement areas as public access and wetland habitat restoration. Program change, for the purposes of 309, means "routine program change" as defined in section 923.84 and "amendment" as defined in section 923.80, and includes the following activities that will enhance a state's or territory's ability to achieve one or more of the coastal zone enhancement objectives:

1. A change to coastal zone boundaries;
2. New or revised authorities, including statutes, regulations, enforceable policies, administrative decisions, executive orders, and memoranda of agreement/understanding;
3. New or revised local coastal programs and implementing ordinances;
4. New or revised coastal land acquisition, management, and restoration programs;
5. New or revised Special Area Management Plans (SAMP) or plans for Areas of Particular Concern (APC) including enforceable policies and other necessary implementation mechanisms or criteria and procedures for designating and managing APCs; and,
6. New or revised guidelines, procedures and policy documents which are formally adopted by a state or territory and provide specific interpretations of enforceable CZM program policies to applicants, local government and other agencies that will result in meaningful improvements in coastal resource management.

C. Program Implementation

Section 309 funds may be used to support selected implementation activities for section 309 program changes for up to two years. Program implementation activities should be described in the Strategy and must meet the following general requirements:

1. relate to one or more 309 program changes;
2. be a component of the activity that measures, within two years, how it will improve effectiveness of the program; and,
3. be cost effective.

Within these general requirements, eligible program implementation activities include:

1. administrative actions to carry out and enforce program change policies, authorities and other management techniques including the development of measurable management objectives and performance indicator's for each state's priority enhancement areas;
2. equipment purchases related to the program change; and
3. allowable costs as determined in accordance with the provisions of OMB Circular A-87: Cost Principles for State and Local Governments.

Please note that eligible section 309 implementation activities do not include 306A type projects such as acquisition and construction projects.

III. DISTRIBUTION OF 309 FUNDS: FORMULA AND PSM

Section 309 funds may be awarded in two ways: (1) formula; and (2) individual evaluation and ranking of Projects of Special Merit (PSMs). Over the past five years, all 309 funding has been distributed via formula. The decision on whether to conduct a PSM round will continue to be made on an annual basis as part of the allotment guidance development process. A primary consideration in determining the split between formula and PSM funding will be maintaining adequate and predictable formula funding.

A. Formula Activities

The purpose of the formula funding allocation is to provide a predictable multi-year level of funding to support states and territories in undertaking projects in compliance with their Strategies. Formula projects are those that are critical to meeting the work plan in the Strategy. Because funding for formula tasks is more predictable than that for PSMs, basic functions necessary to achieve the objectives of the Strategy, such as hiring staff, should be included in formula projects. Projects proposed for the formula funding category must meet the following requirements:

1. Projects are consistent with the state's or territory's approved Assessment and Strategy and advance the objectives/program changes of the Strategy;
2. Project costs are reasonable and necessary to achieve the objectives of both the project and the Strategy. Allowable costs will be determined in accordance with the provisions of OMB Circular A-87: "Cost Principles for State and Local Governments;"
3. The projects are technically sound;
4. The state or territory has an effective plan to ensure proper and efficient administration of the projects; and,
5. The state or territory has submitted the required project information as described in Section IV.B.2.

B. Projects of Special Merit

OCRM may award a portion of section 309 funds to states and territories based on an annual evaluation and ranking of PSMs. The purpose of PSMs is to offer states and territories that are particularly innovative and have performed in an exemplary fashion under the formula program an opportunity to obtain additional funds. As PSM funds will be awarded competitively, these projects should further the objectives of a state's or territory's Strategy, but may not be essential to meeting specific elements of the work plan. PSM projects should not be dependent on long-term levels of funding to succeed. States and territories may submit multi-year PSM proposals; however all proposals will be evaluated for single-year funding. In reviewing proposals for out-year funding for multi-year PSMs, OCRM will recognize prior funding commitments; however, OCRM does not guarantee that funds will be awarded for subsequent years. In any case, only the highest ranked PSM projects will be funded.

OCRM will establish a maximum amount of PSM funds a state or territory may be awarded annually, which may vary depending on the total section 309 funds available. PSM proposals must meet the same criteria as the standard formula projects, listed above. In addition, they will be evaluated and ranked using the following criteria:

1. Merit (90 points). OCRM will review each proposal to determine the following:
 - o Degree to which the project significantly advances the program improvements and leads to a program change or implementation activity identified in the state's or territory's Strategy;
 - o Degree to which the project will result in improved management of coastal resources or uses;
 - o Overall benefit of the proposal to the public relative to the proposal's cost;
 - o Innovativeness of the proposal;
 - o Transferability of the results to problems in other coastal states; and
 - o The state's or territory's past performance under section 309.
2. Fiscal needs (5 points). OCRM will review each proposal to determine the "fiscal needs" of a state or territory.
3. Technical needs (5 points). OCRM will review each proposal to determine the technical needs of a state or territory.

IV. ASSESSMENT AND STRATEGY

This section covers the following items: purpose of the Assessment and Strategy, guidance on content and format for the Assessment and Strategy, the process for determining priority enhancement areas, and public review requirements. OCRM encourages states and territories to combine the Assessment and Strategy into one document. If the Assessment and Strategy are combined, the Strategy for addressing a priority enhancement area may either be included directly after the Assessment of that priority enhancement area, or as part of a separate Strategy section. The length of the Assessment/Strategy document should be limited to 60 pages (or, if produced separately, 35 pages for the Assessment and 25 - 30 pages for the Strategy). States and territories should submit the Assessment/Strategy electronically, as well as in hard copy.

A. Assessments and Priority Enhancement Areas

1. Purpose

The revised Assessment will build on the last Assessment and serve many of the same purposes, including:

- a. identifying changes that have taken place within each of the nine section 309 enhancement areas, including problems that have been addressed, new issues that have arisen, and changes in the status of the resources;
- b. describing the nature of problems, changes in the status of resources, or new issues, including the extent to which they are being addressed and their relative

- importance; states should consider the development and use of performance indicators when determining changes in the status of resources or issues;
- c. providing the basis for determining the priority needs for improvement of state and territorial coastal management programs; and,
- d. providing the public with an opportunity to learn more about accomplishments under section 309 and to comment on the state's or territory's identification and justification of current priority needs, as well as the possible means that the state or territory is considering to address the identified needs.

2. General Content and Format

The revised Assessment is structured to: (1) simplify the process for completing the Assessment; (2) provide information in a consistent format that can be useful in developing national products such as reports and databases; and, (3) summarize section 309 accomplishments. The Assessment will essentially be a combination of responses to questions and directives which have been provided in Attachment A, and will consist of three major sections: Introduction; Summary of Past 309 Efforts; and, Enhancement Area Analysis. States that will be undertaking their first assessment may need to expand on the question and answer format to provide adequate background information.

- a. **Introduction:** The introduction should briefly summarize the states or territories section 309 program and the state's or territory's proposed priority enhancement areas (1-2 pages). If the Strategy is being included in the same document, the introduction should describe the format being followed.
- b. **Summary of Past Section 309 Efforts:** The state or territory should include a brief summary of past efforts under the section 309 program since the last Assessment update. This section should describe major accomplishments under 309 since the last Assessment, including not only program changes but other improvements, either planned or unplanned. If the state or territory is including implementation activities in its Strategy for a particular enhancement area, it may want to use the summary of past efforts to demonstrate the need to undertake implementation activities.
- c. **Enhancement Area Analysis:** This section should address the questions, directives and charts for each of the nine priority enhancement areas. The purpose of these questions, directives and charts is to determine the status of each enhancement area since the previous Assessment, and to clearly identify priority needs. States should consider the development and use of performance indicators in this part of their Assessments. It is expected that this section will make up the bulk of the Assessment. Answers should be succinct, but include a context for the response. Bullets are acceptable, as long as sufficient relevant information is provided. Additional documentation may be attached as appendices. States and territories should rely on existing data and information.

In developing the revised Assessment, states and territories should keep in mind that the document will be undergoing public review (discussed further below), and therefore should be concise and focused. We are also considering posting the updated and approved Assessments on the OCRM website. To provide adequate background information, states and territories should also make the previous Assessment available to the public.

3. Determining Priority Enhancement Areas

States and territories will continue to rank enhancement areas as high, medium and low priority, based on the Assessment. While developing the Assessment, states and territories should review the priorities identified in the previous Assessment and consider the objectives and sub-objectives for each of the nine enhancement areas. There have been a few minor changes to the objectives and sub-objectives for each of the enhancement areas. The priorities should also reflect the suitability of section 309, with its emphasis on program changes, for addressing the underlying issues.

States and territories should work closely with the program specialist and team leader in the Coastal Programs Division to review the state's or territory's existing priorities and make a preliminary determination during development of the Assessment on whether these priorities should be revised. This preliminary determination will help guide the formulation of the revised Assessment since it is anticipated that high priority areas, and changes in priorities, will require more detailed answers to the Assessment questions discussed above.

Pursuant to section 309(d)(1), the final determination of each state's or territory's priority needs rests with OCRM. However, this determination will be made in full consultation with each state and territory both during the development of the Assessment, and with due consideration of public comment once the Assessment has been submitted to OCRM for review and approval.

B. Strategy

1. General Content

The principal purpose of the Strategy is to describe projects the state or territory will undertake to meet the priority enhancement area needs identified in the updated Assessment. In FY 2006, each participating state and territory will submit a Strategy (either separately or combined with the Assessment), to be evaluated and ranked by OCRM. Strategies must be based on the needs and priority enhancement areas identified in the Assessments, and should cover the 5-year period from FY 2006 - FY 2011. The Strategy must adhere to the outline described below. The Strategy should include enough information for OCRM to determine whether: (1) the proposed program change or implementation activity adequately addresses the needs identified in a state's or territory's Assessment; and, (2) the state's or territory's general work program to achieve the program change is appropriate and cost-effective.

The Strategy should identify program changes and implementation activities and include general outlines demonstrating the approach the state or territory is proposing to accomplish these efforts. The Strategy must include estimated costs, a schedule, and a general work plan listing

necessary steps for achieving the program changes and implementation activities. Detailed information on annual work programs, budgets, benchmarks, and work products, previously required in the Strategy itself, will now be determined through the annual award negotiation process. It is not necessary for states and territories to differentiate between weighted formula projects and PSMs in the Strategy. However, states and territories should keep in mind the differing criteria for weighted formula projects and PSMs in developing their Strategy and in out- years when submitting projects for PSM funding.

2. Format

States and territories should use the following format in writing their draft and final Strategy. State and territory Strategies should reflect the specific criteria that OCRM will use to evaluate and rank Strategies (pages 12-14). For each priority enhancement area that will be addressed in the Strategy, states and territories must include the following:

- a. Information for each priority enhancement area addressed in the Strategy including a brief summary of the coastal management problem identified in the state's or territory's Assessment (1-2 paragraphs). Please note that this summary is not necessary if the state or territory is producing a combined Assessment/Strategy document.
- b. Identification of proposed program changes and/or implementation activities including a description of the program changes or implementation activities as defined on page 2 of this guidance.
- c. For implementation activities, the state or territory should briefly describe the program change that has already been adopted, and how the proposed activities will further that program change.
- d. Discussion of the anticipated effect of the changes or implementation activities including a clear articulation of scope and value in improved coastal management and resource protection. States are encouraged to develop measurable management objectives and performance indicators to better assess program effectiveness.
- e. Explanation as to why the proposed program changes or implementation activities are the most appropriate means to address the priority need. This discussion should reference the key findings of the Assessment and explain how the Strategy addresses those findings.
- f. A general work plan that identifies the major steps necessary for achieving the program changes or implementation, and a general schedule for completing the work plan.
- g. A summary of estimated costs.
- h. Discussion of the likelihood of attaining the proposed program changes and implementation activities, including: the nature and degree of support for pursuing the Strategy and the proposed changes; and, the specific actions the state or territory will undertake to maintain or build future support for achieving and implementing program changes, including education and outreach activities.

3. Fiscal and Technical Needs:

The Strategy should document fiscal and technical needs and such documentation should include:

- a. For fiscal needs, information on the current state or territory budget (surplus or deficit), the budget of the applying agency (increase or decrease over previous fiscal year), future budget projections, and what efforts have been made by the applying agency, if any, to secure additional state funds from the legislature and/or from off-budget sources such as user fees; and,
- b. For technical needs, identification of the technical knowledge, skills and equipment that are needed to carry out proposed projects and that are not available to the applying agency, and what efforts the applying agency has made, if any, to obtain the trained personnel and equipment it needs (for example, through agreements with other state agencies).

C. Public Review

Because the CZMA places a strong emphasis on public participation, states and territories will provide opportunities for public review and comment on the revised Assessment. Since OCRM is encouraging a combined Assessment/Strategy document, states and territories may choose to present either the entire document for public review, or only the Assessment portion. The public review process does not necessarily require formal public hearings. Public review may occur through a variety of means, e.g., advisory committees, Commission meetings, or informal public workshops. At a minimum, states and territories should provide adequate public notice, document availability, and a minimum 30-day public comment period. As indicated in the attached schedule, OCRM will review the draft Assessment concurrently with public review. A summary of public comments and responses should be included with the final Assessment/Strategy document.

D. Threatened and Endangered Species Considerations

An increasing number of species found in the coastal zone have been identified as endangered or threatened, both at the state and federal levels, with the loss or modification of habitat being identified as a concern. Consequently it has become increasingly important to look at how CZM activities might affect threatened and endangered species. Most states, particularly those with numerous ESA listed species, already address threatened and endangered species as part of planning and permitting activities. Considering these issues in the Assessments and Strategies can help states to plan for projects that address these needs through section 309 funding in future years. States should consider the following when preparing Assessments and Strategies:

- o Examine potential endangered and threatened species issues in each of the appropriate enhancement areas, including their implications for identifying priority enhancement areas.
- o Identify opportunities for program changes and/or habitat conservation and restoration as a component of the Strategies to address these issues.

- o Consider whether other proposed program changes in the Strategies could have negative effects on endangered and threatened species, and whether there are ways to lessen or eliminate these potential effects.

E. Relationship to Marine Protected Areas and Coral Reef Protection Activities

President Clinton issued an Executive Order on the protection of Coral Reefs on June 11, 1998, and subsequently on May 27, 2000, an Executive Order on Marine Protected Areas. Both Executive Orders provide an important opportunity for states to enhance protection and management of marine and other special coastal land and water areas.

Section 309 provides several opportunities for addressing coral reefs and other types of possible marine protected areas as “special areas”. First, there is a specific enhancement area (section 309(6)) that calls for preparing and implementing special area management plans for important coastal areas. Second, there are opportunities to address specific issues within special management areas through the other enhancement areas such as coastal hazards, public access, wetlands, and planning for ocean and Great Lakes’ resources.

Because of the continuing recognition of the importance of special marine and coastal areas, and the coastal management programs to address these issues, we encourage states to consider how they can improve management of their special marine and Great Lakes’ areas as they update their section 309 Assessments and Strategies.

V. OCRM REVIEW AND RESPONSE TO THE ASSESSMENT/STRATEGY

OCRM will review the state and territory Assessments/Strategies to determine (1) whether the Assessment has been successfully updated; (2) priority enhancement areas; and (3) if the Strategy is acceptable and therefore eligible for funding. States and territories that receive an acceptable ranking will receive funding based the standard allocation formula described at 15 C.F.R. 927.1(c). A state or territory whose Strategy receives a ranking of not acceptable, will not receive section 309 funding, but will have the opportunity to submit a revised Strategy for approval during the following fiscal year.

A. Review of Assessments

States are required to update Assessments as described above. OCRM will review the Assessments for compliance with the requirements, and the identification of priority enhancement areas. We expect that the approval of this third round of section 309 Assessments and Strategies will be streamlined, since they update and build upon previous, approved Assessments.

B. Criteria for Review and Ranking of Strategies

As with the last section 309 round, OCRM will apply two ranking levels to the Strategies: acceptable and not acceptable. OCRM will evaluate each state's and territory's Strategy

individually, using the four criteria identified below. This evaluation will occur solely within the context of each state's and territory's coastal resource management needs, its existing coastal management program and its governmental structure. Listed below are the criteria that will be applied when evaluating and ranking the Strategies:

1. Scope and Value

In evaluating the scope and value of a proposed program change or implementation activity, OCRM will consider the following factors:

- a. The scope of the proposed change in terms of quantifiable improvements in coastal resource management. Examples are: relative number of acres of wetlands protected or percentage of wetlands restored; number of public access ways improved, etc.
- b. The qualitative magnitude of the proposed change in terms of improved management of coastal resource(s) of local, state, or national significance, including state or federally listed endangered and threatened species.
- c. The threat to the resource or the need for improved management. Will the opportunity to protect the resource or address the issue be lost in the short term if the proposed change is not made?

In applying these factors, OCRM recognizes that it may be difficult to determine the quantitative and qualitative values of some program changes or implementation activities, particularly in cases where broad institutional improvements are proposed. States and territories should, however, provide the best possible estimates of the impacts of the proposed activities.

If a state or territory cannot identify a specific program change or implementation activity to address a priority enhancement area, it may identify a range of possible options it will pursue. In this case, the state or territory must still specify the basic scope and direction of the enhancement grant work.

2. Technical Merit

In reviewing the work plan component of state and territory Strategies, OCRM will consider the following questions:

- a. Is the program change or implementation activity an appropriate means for addressing the "priority need?" Is the state or territory addressing the most appropriate objective with the appropriate tools or mechanisms (planning, regulation, management) at the right level of government (state, regional, local), or are there more effective and/or efficient ways of addressing the need?
- b. Is the work plan comprehensive in overall design, personnel, schedule and sequencing? Are data collection, synthesis, concept development, and public involvement tasks appropriate? Does the work program include sufficient information to gauge progress toward attaining the proposed activity?

- c. Does the work plan schedule reflect the most effective and logical approach to enacting the proposed program change or implementation?
- d. Is the work plan cost-effective? Are the costs of developing the program change or implementation activity commensurate with the value of the proposed improvement in coastal management?

3. **Likelihood of Success**

In evaluating the likelihood of attaining the proposed change(s) or implementation steps, OCRM will consider the following factors:

- a. The nature and degree of existing support for the Strategy and its objectives.
- b. The strength of the state's or territory's Strategy to maintain and build future support and consensus regarding the objectives of the Strategy.
- c. Past performance of the state or territory under section 309.

4. **Technical and Fiscal Needs**

OCRM will consider the technical and fiscal needs of each state and territory as described in its Strategy.

VI. SCHEDULE

December 15, 2004	Draft section 309 guidance issued.
February 7, 2005	Comments due to CPD
February 23, 2005	Final Assessment and Strategy approval guidance issued.
Spring 2005	States and territories begin work on Assessments and Strategies.
October 1, 2005	Draft Assessments and Strategies due to CPD.
November 1, 2005	Comments to states due from CPD.
December 31, 2005	Final Assessments and Strategies due to CPD, including public comments and responses.
January 1, 2006	If needed, submissions are returned to states for changes; two weeks are provided to address concerns.
February 1, 2006	CPD ranks and advises states and territories on Strategy approval status.
July 1, 2006	OCRM begins awarding section 309 funds to implement new Strategies.